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ABSTRACT

Title IX of the 1972 Education Amendments prohibits sex discrimination in the admission and treatment of students by educational programs and activities receiving federal financial assistance. The document presents a summary of the implementing regulation grouped into five major sections: (1) general provisions that outline the general procedures required for ensuring nondiscrimination and compliance with the regulation; (2) coverage provisions that identify the education institutions, programs, and activities covered by the regulation; (3) admissions provisions that specify prohibitions of discrimination in the recruitment and admissions of students; (4) provisions pertaining to the treatment of students in educational programs and activities that delineate the standards for nondiscrimination in student programs; and (5) employment provisions that establish the requirements for nondiscrimination in employment. (JMF)

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Title IX of the Education Amendments of 1972— A Summary of the Implementing Regulation

U.S. Department of Health, Education, and Welfare

Office of Education

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Title IX of the Education Amendments of 1972— A Summary of the Implementing Regulation

Resource Center on Sex Roles in Education
National Foundation for the Improvement of Education
Washington, D.C.

U.S. Department of Health, Education, and Welfare

David Mathews, Secretary
Virginia Y. Trotter, Assistant Secretary for Education

Office of Education
T.H. Bell, Commissioner

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DISCRIMINATION PROHIBITED – No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, or be so treated on the basis of sex under most education programs or activities receiving Federal assistance.

Title IX of the Education Amendments of 1972— A Summary of the Implementing Regulation

Title IX of the 1972 Education Amendments is the first comprehensive Federal law to prohibit sex discrimination in the admission and treatment of students by education programs and activities receiving Federal financial assistance. Sex discrimination in the employment policies and practices of education programs and activities is also prohibited. The intent of the law is to eliminate sex discrimination in the programs, policies and administration of education programs and activities. It reads:

> *No person in the United States shall, on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*

The implementing Regulation for Title IX was issued by the Secretary of Health, Education and Welfare in June, 1975. Its provisions may be grouped into five major sections–general provisions (contained in Subpart A of the Regulation), which outline the general procedures required for ensuring nondiscrimination and compliance with the Regulation; coverage provisions (Subpart B of the Regulation), which identify the education institutions, programs and activities covered by the Regulation; admissions provisions (Subpart C of the Regulation), which specify prohibitions of discrimination in the recruitment and admissions of students; provisions pertaining to the treatment of students in educational programs and activities (Subpart D of the Regulation), which delineate the standards for nondiscrimination in student programs; and employment provisions (Subpart E of the Regulation), which establish the requirements for nondiscrimination in employment.

Following is a summary of the Regulation. It follows the sequence of the Regulation itself; the number contained in brackets at the end of each summary paragraph refers to the section of the Regulation from which the information is derived.

Two definitions contained in the Regulation are of importance to users of this summary:

Recipient: The "recipient" referred to throughout the summary is defined as "any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance." [§86.2(h)]

Federal financial assistance: Education agencies or institutions which receive any of the following are considered recipients of "Federal financial assistance" for purposes of Title IX:

- grants or loans from the Federal government, including funds for:
  - –acquisition, construction, or renovation of buildings or facilities;
  - –scholarships, loans, grants, wages or other funds extended for payment to or on behalf of students of the institution, whether paid to the institution or directly to students for payment to the institution;
- grants of Federal property;
- provision of the services of Federal personnel;
- sale or lease of Federal property at nominal consideration;
- any other contract, agreement or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty. [§86.2(g)]

Copies of the Regulation have been supplied to all local education agencies and postsecondary institutions. Copies of the Regulation may also be obtained from the Department of Health, Education, and Welfare, Washington, D.C. 20201.

TITLE IX—A SUMMARY OF THE IMPLEMENTING REGULATION

GENERAL PROVISIONS

Remedial action. In the event of a finding of sex discrimination by the Director of the Office for Civil Rights in an education program or activity of a Federally-assisted institution or agency, the institution or agency may be required to take remedial action to overcome the effects of such discrimination. Such requirements would be specified by the Director. [§86.3(a)]

Affirmative action. In the absence of a finding of sex discrimination, a recipient education institution may take affirmative action to overcome the effects of conditions which resulted in limited participation by persons of a particular sex. [§86.3(b)]

Self-evaluation. Every education institution receiving Federal funds must, within one year of the effective date of the Regulation:

- evaluate its policies and practices as to their compliance with the Regulation;
- modify its policies and practices as necessary for compliance;
- take appropriate remedial steps to eliminate the effects of discrimination resulting from these policies and practices.

A description of any modifications and remedial actions taken must remain on file for at least three years following completion of the evaluation. [§86.3(c)]

Assurance required. Every application for Federal financial assistance for any education program or activity must, as a condition of its approval, contain or be accompanied by an assurance form certifying compliance with the Regulation. Forms will be supplied by the Office for Civil Rights, HEW. [§86.4]

Designation of responsible employee. Every recipient must designate at least one employee to coordinate compliance efforts and investigate any complaints of sex discrimination; all students and employees must be notified of the name, office address and phone number of this employee. [§86.8(a)]

Grievance procedures. Every recipient must adopt and publish grievance procedures providing for resolution of student and employee complaints. (Utilization of these procedures is *not* a prerequisite for the filing of complaints with the Office for Civil Rights.) [§86.8(b)]

Notification of policy. Recipients must take specific and continuing steps to notify applicants for admission, students, parents, employees, and all unions or professional organizations holding bargaining or professional agreements with the recipient of its compliance with Title IX. Initial notification was required by October 19, 1975. [§86.9(a)]

Publications. Recipients must include a policy statement of nondiscrimination on the basis of sex in each announcement, bulletin, catalog, application form, or other materials used in connection with the recruitment of students or employees. No publication should suggest, by text or illustration, that the recipient treats students, applicants, or employees differently on the basis of sex except as permitted by the Regulation. [§86.9(b)]

COVERAGE

General. The Regulation applies to every recipient and to each education program or activity operated by a recipient which receives or benefits from Federal financial assistance. (Information regarding judicial interpretation of this language is provided in the Preamble to the Regulation. In analogous cases regarding racial discrimination, courts have held that the education functions of a school district or college include any service, facility, activity or program which it operates or sponsors, including athletics and other extracurricular activities, and that Federal funds may be terminated upon a finding that "they are infected by a discriminatory environment.") [§86.11]

Exemptions from coverage include: education institutions controlled by religious organizations, to the extent that compliance would not be consistent with religious tenets; military and merchant marine educational institutions; and social fraternities and sororities in postsecondary institutions, YM and YWCA's, Girl and Boy Scouts, Camp Fire Girls, and other voluntary youth service organizations. [§86.12, §86.13 and §86.14]

Coverage of the admissions provisions applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education, other than those which have been traditionally and continually single-sex. This does not include first-degree professional and vocational programs offered at private undergraduate institutions. [§86.15]

ADMISSIONS

The Regulation requires that no person may, on the basis of sex, be denied admission or be subject to discrimination in admission by any recipient subject to the admissions provisions of Title IX. Specifically prohibited are:

- ranking applicants separately on the basis of sex;
- applying numerical limitations on the number or proportion of students of either sex who may be admitted.
- treating one individual differently from another on the basis of sex;
- administering any test or criterion for admission which has a disproportionately adverse effect on members of one sex unless such test or criterion is shown to validly predict success in the education program or activity and alternative tests are not available;
- applying any rule concerning the actual or potential parental, marital, or family status of a student which treats persons differently on the basis of sex;
- discriminating against or excluding any person on the basis of pregnancy or related conditions (these must be treated as any other temporary disability);
- making pre-admission inquiry as to the marital status of an applicant. [§86.21(a), (b), (c)]

Discrimination in the recruitment of applicants for admission is also prohibited:

- preference may not be given nor may applicants for admission be recruited on the basis of attendance at an educational institution which is predominantly single-sex unless the pool of applicants eligible for such preferences includes roughly equivalent numbers of males and females [§86.22];
- a recipient may not discriminate on the basis of sex in the recruitment of students unless additional recruitment efforts for members of one sex are undertaken as remedial or affirmative action. [§86.23(a)]

TREATMENT OF STUDENTS IN EDUCATION PROGRAMS AND ACTIVITIES

General. All education institutions or activities receiving Federal financial assistance are subject to these regulatory requirements, including those whose admissions are exempt from coverage. This portion of the Regulation requires that:

> *no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training or any other education program or activity operated by a recipient.* [§86.31(a)]

It specifically provides that recipient institutions may not, on the basis of sex:

- provide different aid, benefits, or services;
- deny any person such aid, benefit, or service;
- subject any person to separate or different rules of behavior, sanctions, or other treatment;
- discriminate against any person in the application of any rules of appearance;
- apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state tuition;
- provide significant assistance (defined in the Preamble to the Regulation as facilities or a faculty sponsor) to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefits or service to students or employees;
- limit any person in the enjoyment of any right, privilege, advantage, or opportunity. [§86.31(b)]

Assistance administered by an institution for study abroad. A recipient institution may administer awards established by foreign or domestic legal instruments restricted to members of one sex which are designed to provide

opportunities for study abroad provided the institution otherwise makes available reasonable opportunities for members of the other sex. [§86.31(c)]

Programs not operated by recipients. A recipient institution may not facilitate, require, permit, or consider as part of an activity or program it operates, participation by any applicant, student, or employee in a program not operated by the recipient which discriminates on the basis of sex. This includes participation in educational consortia and cooperative employment and student teaching assignments. [§86.31(d)]

Housing. A recipient may not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing. A recipient may provide separate housing on the basis of sex, provided that housing provided for students of one sex, when compared to that provided to students of the other, is as a whole proportionate in quantity to the number of students of that sex applying and comparable in quality and cost to the student. [§86.32(a)(b)]

A recipient which assists any agency or person in making housing available to its students must take reasonable action to assure itself that housing provided is proportionate in quantity and comparable in quality and cost to students of both sexes. A recipient may not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by the recipient. [§86.32(c)]

Facilities. A recipient may provide separate toilet, locker room and shower facilities on the basis of sex; those provided for one sex must be comparable to those provided for the other. [§86.33]

Course offerings. Course offerings or other education activities may not be provided separately on the basis of sex, nor may participation therein be refused or required on such basis. Included are health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. [§86.34]

- With respect to physical education courses, institutions must comply with this requirement as expeditiously as possible but in no event later than one year from the effective date of the Regulation at the elementary level and three years from the effective date at the secondary and postsecondary levels. Students may be grouped by ability in physical education classes and activities as long as ability is assessed by objective standards developed and applied without regard to sex. Students may be separated by sex within physical education classes during participation in contact sports. [§86.34(a)(b)(c)]

- Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted separately for males and females. [§86.34(e)]

- Recipient institutions may make requirements based on vocal range or quality which result in choruses of one or predominantly one sex. [§86.34(f)]

Schools of vocational education. A local education agency may not, on the basis of sex, exclude any person from admission to any institution of vocational education or any other school or educational unit it operates unless it otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service and facility offered in or through such schools. [§86.35]

Counseling and counseling materials. Institutions may not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants. [§86.36(a)]

- Recipients may not use different materials for students on the basis of sex or use materials which permit or require differential treatment of students on such basis unless such materials cover the same occupations and interest areas and their use is shown to be essential to eliminate sex bias. Recipients must develop and use internal procedures for ensuring that counseling materials do not so discriminate. [§86.36(b)]

- Where a recipient finds that a particular class or course of study contains a substantially disproportionate number of individuals of one sex, the recipient must take such action as is necessary to assure itself that this disproportion is not the result of sex discrimination by counselors or in counseling materials. [§86.36(c)]

Financial assistance. Recipients may not, on the basis of sex:

- provide different amounts or types of financial assistance, limit eligibility for such assistance, or apply different criteria for selection;

- apply any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other with regard to marital or parental status;

- assist, through solicitation, listing, approval or provision of facilities or services, any agency or person which provides assistance to a recipient's students in a manner which discriminates on the basis of sex. [§86.37(a)]

Recipients may administer financial assistance established by domestic or foreign legal instruments which require that awards be made to members of a specified sex provided that the overall effect of the awarding of such sex-restricted funds does not discriminate on the basis of sex. To ensure such nondiscriminatory effect:

- students must be selected for awards of financial assistance on the basis of nondiscriminatory criteria;
- an appropriate sex-restricted award should be allocated to each student selected;
- no student may be denied the award for which he or she was selected because of the lack of awards or funds designated for a member of that student's sex. (According to the Preamble to the Regulation, if there are insufficient sources of financial aid designated for members of a particular sex to provide funds for students of that sex selected, the institution is required to obtain the necessary funds from other sources or to award less assistance from the sex-restricted sources.) [§86.37(b)]

If a recipient awards athletic scholarships, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics. Separate athletic scholarships for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with the portion of the Regulation dealing with athletics. [§86.37(c)]

Employment assistance to students. A recipient institution which assists any agency or person in making employment available to its students must assure itself that employment is made available without discrimination; it may render no services or assistance to agencies or individuals which discriminate on the basis of sex in employment practices. [§86.38]

Health and insurance benefits and services. Institutions may not discriminate on the basis of sex in providing medical, hospital, accident or life insurance benefits, services, policies or plans to any students. This does not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. Any recipient which provides full coverage health services must provide gynecological care. [§86.39]

Marital or parental status. A recipient may not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex. [§86.40(a)]

No student may be discriminated against or excluded from an education program or activity (including any class or extracurricular activity) on the basis of pregnancy or related conditions unless the student requests voluntarily to participate in a separate portion of the program or activity. [§86.40(b)]

- A recipient may require a pregnant student to obtain a physician's certification of her physical and emotional ability for normal participation in the education program or activity if such certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

- A recipient which operates a portion of its education program separately for pregnant students, admission to which is voluntary, must ensure that this program is comparable to the program offered to non-pregnant students.

- A recipient must treat pregnancy and related conditions in the same manner and under the same policy as other temporary disability with respect to any medical or hospital benefit, service or policy in which such recipient participates with respect to students. If there is no leave policy maintained for students, pregnancy and related conditions must be treated as justification for a leave of absence, after which a student shall be reinstated to the status she held before the leave began. [§86.40(b)]

Athletics. The general requirement of this section is that:

no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide athletics separately on such basis. [§86.41(a)]

Separate teams may, however, be operated for members of each sex where:

- selection for such teams is based upon competitive skill; or

- the activity involved is a contact sport.

Where a recipient operates or sponsors a team in a particular sport for members of one sex but operates no such team for members of the other, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered

unless the sport involved is a contact sport (boxing, wrestling, rugby, ice hockey, football, basketball and other sports the major activity of which involves bodily contact). [§86.41(b)]

Equal opportunity for members of both sexes must be provided in interscholastic, intercollegiate, club or intramural athletics operated or sponsored by a recipient. In assessing the availability of equal opportunity, HEW will consider, among other factors:

- whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- provision of equipment and supplies;
- scheduling of games and practice time;
- travel and per diem allowance;
- opportunity to receive coaching and academic tutoring;
- assignment and compensation of coaches;
- provision of locker rooms, practice and competitive facilities;
- provision of housing and dining facilities and services;
- publicity.

Unequal aggregate expenditures for members of each sex or for male and female teams will not constitute noncompliance, but HEW may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity. [§86.41(c)]

All recipient institutions must comply as expeditiously as possible; elementary schools must be in full compliance with this section within one year from the effective date of the Regulation, secondary and postsecondary schools within three years. [§86.41(d)]

Textbooks and curricular materials. Nothing in the Regulation requires or prohibits the use of particular textbooks or curricular materials. [§86.42]

EMPLOYMENT

General. All education institutions or activities receiving Federal financial assistance must comply with the employment provisions of the Regulation. In general, the Regulation prohibits:

- exclusion from participation in, denial of the benefits of, or subjection to discrimination on the basis of sex of any person in employment, or recruitment, consideration, or selection therefor, whether full or part-time.

- the limitation, segregation, or classification of applicants or employees in any way which could adversely affect any employment opportunities or status because of sex;

- entrance by a recipient into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to sex discrimination, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient;

- the granting of preferences to applicants for employment on the basis of attendance at a single-sex educational institution, unless the numbers of each sex eligible for such preference are roughly equivalent. [§86.51(a)]

Specifically, discrimination is prohibited in:

- recruitment, advertising, and the process of application for employment;

- hiring, upgrading, promotion, tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

- rates of pay or any other form of compensation;

- job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

- the terms of any collective bargaining agreement;

- granting and return from leaves of absence, leave for pregnancy and related conditions, leave for persons of either sex to care for children or dependents;
- fringe benefits;
- selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, sabbaticals and leaves of absence to pursue training;
- employer-sponsored activities, including social or recreational programs;
- any other term, condition, or privilege of employment. [§86.51(b)]

Employment criteria. A recipient may not administer any test or other criterion for employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless it is shown to validly predict successful performance in the position in question and alternative tests or criteria are not available. [§86.52]

Recruitment. A recipient may not discriminate on the basis of sex in the recruitment and hiring of employees. When a recipient is found to be presently discriminating on the basis of sex (or to have so discriminated in the past), it will recruit members of the sex so discriminated against so as to overcome the effects of past or present discrimination. A recipient may not recruit primarily at entities which furnish as applicants predominantly members of one sex. [§86.53]

Compensation. A recipient may not, on the basis of sex, make distinctions in rates of pay or other compensation which result in the payment of wages to employees of one sex at a rate less than that paid to employees of the other sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility and which are performed under similar working conditions. [§86.54]

Job classification. A recipient may not:

- classify a job as being for males or females;
- maintain separate lines of progression, seniority lists, career ladders, or tenure systems based on sex;
- maintain separate lines of progression, etc., which classify persons on the basis of sex unless sex is a *bona-fide* occupational qualification for the positions in question. [§86.55]

Fringe benefits. Under this Regulation, fringe benefits means any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment. A recipient shall not:

- discriminate on the basis of sex with regard to making fringe benefits available to employees, or make fringe benefits available to spouses, families or dependents of employees differently upon the basis of the employee's sex;

- administer, operate, offer, or participate in a fringe benefit plan which does not provide *either* for equal periodic benefits or equal recipient contributions to the plan for members of each sex;

- participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates on such basis. [§86.57(a)(b)]

Marital or parental status: A recipient may not:

- take any employment action concerning the potential marital, parental, or family status of an employee or applicant which treats persons differently on the basis of sex; or

- which is based upon whether an employee or applicant is the head of household or principal wage earner. [§86.57(a)]

Pregnancy. A recipient may not discriminate against or exclude from employment any employee or applicant on the basis of pregnancy or related conditions. Pregnancy and all related conditions must be treated as any other temporary disability for all job-related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and reinstatement, and under any fringe benefits offered to employees. If a recipient does not maintain a leave policy for its employees, pregnancy and related conditions must be treated as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began, or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities. [§86.57(b)(c)(d)]

Pre-employment inquiries. A recipient may not make pre-employment inquiry as to the marital status of an applicant for employment. A pre-employment inquiry as to applicant sex may be made, but only if such inquiry is made equally of applicants of both sexes and if the results of the inquiry are not used to discriminate. [§86.60(a)(b)]

Sex as a bona-fide occupational qualification. Recipients may make employment decisions prohibited by the Regulation provided they can demonstrate that sex is a *bona-fide* occupational qualification which is essential for carrying out job responsibilities. Such action cannot be based on alleged characteristics or stereotyped characterizations of one or the other sex, or on preference based on sex of the recipient, employees, students, or other persons. This does not prevent consideration of an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex. [§86.61]

ENFORCEMENT PROCEDURES

Pending HEW's final issuance of a consolidated procedural regulation applicable to Title IX and other civil rights legislation administered by the Department, the procedures applicable to enforcement of Title VI of the Civil Rights Act of 1964 will be used to implement the Regulation under Title IX. Under these existing procedures, complaints alleging violations of Title IX may be filed by letter to the Office for Civil Rights, Department of Health, Education, and Welfare, Washington, D.C. 20201 or to the appropriate regional office of the Department of HEW.